

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NORBERT POLZIN

Appeal No. 2002-1641
Application No. 09/276,213

ON BRIEF

Before COHEN, FRANKFORT, and NASE, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 10. Claims 11 through 13, the only other claims pending in this application, have been allowed.

Appellant's invention is directed to a method and device for controlling vibration at at least one wheel during a braking intervention independent of the driver, i.e., during an anti-lock control or a traction control situation, wherein the wheel

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vibrations are damped and at the same time, the performance of the braking control intervention itself is not substantially impaired. Independent claims 1 and 10 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ghoneim	4,947,332	Aug. 7, 1990
Schaefer et al. (Schaefer)	5,193,889	Mar. 16, 1993
Sone et al. (Sone)	5,584,541	Dec. 17, 1996

Claims 1, 2 and 4 through 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schaefer in view of Ghoneim.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schaefer in view of Ghoneim as applied to claim 1 above, and further in view of Sone.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's

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answer (Paper No. 12, mailed October 10, 2001) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 11, filed July 20, 2001) and reply brief (Paper No. 13, filed December 17, 2001) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

Turning first to the examiner's rejection of claims 1, 2 and 4 through 10 under 35 U.S.C. § 103(a), we note that the examiner's position is set forth on pages 3 through 7 of the answer. Regarding the step in method claim 1 of "ascertaining a tendency of a characteristic of the slippage during the vibration" and the corresponding limitation in claim 10 to "an arrangement for ascertaining a tendency of a characteristic of the slippage during the vibration," the examiner has asserted that such limitations are "interpreted . . . as merely stating a

controller will determine an increasing slip state or a decreasing slip state during ABS and ASR modes, which is inherent in ABS and ASR systems so as to control the elements of a brake system accordingly." In addition, the examiner notes that Schaefer discloses that the wheel vibration mentioned therein is ascertained during either an ABS or ASR mode, thus leading the examiner to conclude that a braking force in Schaefer is influenced as a function of the ascertained tendency.

At least with regard to the independent claims, the examiner further posits on page 4 of the answer that

[t]he disclosure of Schaefer et al. merely fails to specify the details of ascertaining the tendency of the slippage by comparing a subsequent slippage value to a previous slippage value. Ghoneim teaches an ASR system in which a tendency or trend of a wheel slippage, such as an increasing or decreasing wheel slip, is ascertained by comparing subsequent slippage values to previous slippage values, see column 9, lines 56-58.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the system of Schaefer et al. with a means of ascertaining the tendency of a characteristic of the slippage by comparing subsequent slippage values to previous slippage values as taught by Ghoneim, this would have provided the system of Schaefer et al. with the capability to react to a state of increasing slippage or a state of decreasing slippage during the ABS or ASR mode.

For the reasons set forth in appellant's brief and reply brief, we find the examiner's position to be untenable. Like appellant, we note that the system and method in Schaefer, upon detection of a wheel vibration during ABS or ASR intervention modes, appear to initiate corrective action to suppress the vibration whether or not the condition which required initiation of the ABS or ASR intervention continues, thus apparently mandating vibration suppression at the expense of the ABS or ASR closed-loop control. See, for example, Schaefer, column 2, lines 20-27, wherein it is noted that in the event of a wheel vibration, further actuation of the valve (16) associated with the vehicle wheel is suppressed upon the vibration reaching a first threshold. By contrast, appellant's method and device ascertain a vibration at at least one wheel and also ascertain a tendency of a characteristic of the slippage during the vibration at the at least one wheel by comparing a subsequent slippage value to a previous slippage value, and then influence the braking force applied during the vibration as a function of the ascertained tendency, thereby apparently more favorably balancing the required ABS or ASR control and the need for suppression of wheel vibration.

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While Ghoneim does mention comparing wheel slip values from current and previous control cycles to determine if wheel slip is increasing or decreasing, it does so in the context of attempting to operate the system therein at a condition where the wheel slip is at or near the critical slip for the particular road condition at each wheel so that the wheel/road tractive force is maximized. Nothing in Ghoneim mentions or addresses suppression of wheel vibrations during ABS or ASR modes of operation, or ascertaining a tendency of a characteristic of the slippage during wheel vibration so that the braking force applied during such vibration can be influenced as a function of the ascertained tendency. Thus, even if combined with Schaefer, it does not appear that appellant's claimed method and device would be the result.

Like appellant, it is our view that the examiner's position on obviousness in this rejection represents a classic case of the examiner using impermissible hindsight derived from appellant's own disclosure and claims in an attempt to reconstruct the claimed subject matter. In that regard, we share appellant's view that there is no motivation or suggestion in the applied references which would have reasonably led one of ordinary skill in the art to a modification of the system in Schaefer based on

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the optimal spin control system of Ghoneim so as to result in the subject matter now claimed by appellant. In that regard, we note that, as our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious. That same Court has also cautioned against focussing on the obviousness of the differences between the claimed invention and the prior art rather than on the invention as a whole as 35 U.S.C. § 103 requires, as we believe the examiner has done in the present case. See, e.g., Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1384, 231 USPQ 81, 93 (Fed. Cir. 1986), cert. denied, 480 U.S. 947 (1987).

Since we have determined that the teachings and suggestions that would have been fairly derived from Schaefer and Ghoneim would not have made the subject matter as a whole of independent claims 1 and 10 on appeal obvious to one of ordinary skill in the art at the time of appellant's invention, we must refuse to sustain the examiner's rejection of those claims under 35 U.S.C. § 103. In addition, we observe that it follows from the above

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determination that the examiner's rejection of dependent claims 2 and 4 through 9 on the basis of the combined teachings of Schaefer and Ghoneim also will not be sustained.

The next rejection for our review is that of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Schaefer and Ghoneim taken further in view of Sone. We have reviewed the added reference to Sone, but find nothing therein which overcomes or provides for the deficiencies we have identified above with regard to the basic combination of Schaefer and Ghoneim. Accordingly, the examiner's rejection of dependent claim 3 under 35 U.S.C. § 103(a) will likewise not be sustained.

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In view of the foregoing, the examiner's decision rejecting claims 1 through 10 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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